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## **Drafting for Dissolution and Liquidation and Redemption of Interests**

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# **Drafting for Dissolution and Liquidation and Redemption of Interests**

## **University of Texas Program on Partnerships and LLCs**

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### **I. Introduction**

This program discusses some provisions of an operating agreement of a limited liability company (“LLC”) or dealing with dissolution and liquidation of the LLC or with the liquidation or redemption of a member’s interest in the LLC. In addition, it discusses some strategies to reduce some of the stress of ending either the member’s involvement in the LLC or the termination of the LLC. In many respects, the liquidation of a member’s interest or the entire LLC involves the same issues that arose in the initial formation of the entity, except in reverse: (1) how will the member’s interest or the business of the LLC be concluded, (2) how will the assets of the LLC come out of the LLC, and (3) steps to ensure the assets land where the members expect.

The process leading to the end of the existence of an LLC is a three step process consisting of: (1) “dissolution,”<sup>1</sup> which is the change in purpose of an LLC from the carrying on its ordinary business and affairs to the winding up of its affairs; (2) “winding up” which is the ceasing to carry on its business and affairs gathering (and possibly selling) the LLC’s assets, paying or otherwise providing for the LLCs creditors, and distributing the remainder of the LLC’s assets and cash to the equity owners of the LLC;<sup>2</sup> and (3) termination, which occurs at the time the winding up is concluded.<sup>3</sup>

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<sup>1</sup> The TBOC does not use the term “dissolution” for business entities but rather refers to an “event requiring winding up of domestic entity. TBOC § 11.051, 101.551. This outline will refer to an event requiring winding up of a domestic entity as a “dissolution.”

<sup>2</sup> TBOC § 11.052.

<sup>3</sup> TBOC § 11.101.

## **II. Dissolution**

### **A. In General**

#### **1. Event Requiring Dissolution**

Dissolution – or as defined in the TBOC, an event requiring winding up of a domestic entity” – is the change in purpose of an LLC from operating a business to winding up its affairs. Under the TBOC, in general, dissolution results from:

- (1) the expiration of any period of duration specified in the domestic entity's governing documents;
- (2) a voluntary decision to wind up the domestic entity;
- (3) an event specified in the governing documents of the domestic entity requiring the winding up, dissolution, or termination of the domestic entity, other than an event specified in another subdivision of this section;
- (4) an event specified in other sections of this code requiring the winding up or termination of the domestic entity, other than an event specified in another subdivision of this section; or
- (5) a decree by a court requiring the winding up, dissolution, or termination of the domestic entity, rendered under this code or other law.<sup>4</sup>

In addition, in the case of an LLC, dissolution will occur upon:

The termination of the continued membership of the last remaining member of a domestic limited liability company is an event requiring winding up under Section 11.051(4) unless, not later than the 90th day after the date of the termination, the legal representative or successor of the last remaining member agrees:

- (1) to continue the company; and
- (2) to become a member of the company effective as of the date of the termination or to designate another person who agrees to become a member of the company effective as of the date of the termination.<sup>5</sup>

In addition, in the case of a domestic general partnership, dissolution will occur upon:

- (a) Unless otherwise provided by the partnership agreement, a voluntary decision to wind up a domestic general partnership, other than a partnership described by Subsection (b),

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<sup>4</sup> TBOC § 11.051.

<sup>5</sup> TBOC § 11.056(a).

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